Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1977

No. 77-650

LOUISE SPENCER,

Petitioner,

vs.

FLOYD SKELTON, IDAHO LIVESTOCK COMMISSION COMPANY, AND THE IDAHO FIRST NATIONAL BANK,

Respondents.

APPENDICES B & C

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APPENDIX B

IN THE SUPREME COURT OF THE STATE OF IDAHO

No. 12250

FLOYD E. SKELTON and IDAHO LIVESTOCK COMMISSION COMPANY, an Idaho Corporation,

Plaintiffs and Respondents,

vs.

LOUISE SPENCER, LELAND SPENCER, CARMEN SPENCER JENSEN, ALEXA SPENCER ELKINGTON, JANET SPENCER, MIRIAM SPENCER, and THE IDAHO FIRST NATIONAL BANK, Executor of the Estate of S. R. Spencer, Deceased,

Defendants,

LOUISE SPENCER and MIRIAM SPENCER,

Defendants and Appellants.

REMITTITUR

District Judge Scoggin, (retired) announced the decision in this cause June 27, 1977, to the effect that the judgment of the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County, is affirmed. Costs to respondents.

IT IS NOW THEREFORE SO ORDERED.

I, R. H. Young, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the attached and foregoing is a true and correct copy of the opinion filed in the above entitled cause July 20, 1977, and now of record in my office.

WITNESS My hand and the seal of this Court July 20, 1977.

/s/ R. H. Young, Clerk

The Idaho Rule as to finality of Judgments of the Idaho Supreme Court is found at Rule 38, Appellate Rules of the Supreme Court of Idaho, which provides the following:

> "A. *Opinions.* The filing of an opinion of a Court shall be the announcement of the opinion. . . .
>
> B. *Finality of Opinions.* Opinions shall become final 21 days after the date of the last of the following events:
>
> 1. The announcement of the opinion;
>
> 2. The announcement of the opinion on rehearing;
>
> 3. The announcement of a modified opinion without a rehearing.
>
> C. *Remittiturs.* When the opinion filed has become final in accordance with this rule, the Clerk of the Supreme Court shall issue and file a remittitur with the District Court. . . ."

APPENDIX C

Received Jan. 23, 1976
Webb, Burton, Carlson & Pedersen

Terry L. Crapo, of
HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

P. O. Box 129
Idaho Falls, Idaho 83401
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Attorneys for Plaintiffs

In the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville

Civil. No. 20,500

FLOYD E. SKELTON, and IDAHO LIVESTOCK COMMISSION COMPANY, an Idaho corporation,

Plaintiffs,

vs.

LOUISE SPENCER, LELAND SPENCER, CARMEN SPENCER JENSEN, ALEXA SPENCER ELKINGTON, JANET SPENCER, MIRIAM SPENCER, and THE IDAHO FIRST NATIONAL BANK, Executor of the Estate of S. R. Spencer, deceased,

Defendants.

JUDGMENT

This cause came on regularly for trial before the Court, sitting without a jury, on September 8, 1975, with

each of the parties appearing in person or through their duly appointed and acting attorneys, and the Court having heard the testimony and having examined the proofs and evidence offered by the respective parties, and each of the parties having submitted a brief following the trial, and the Court being fully advised in the premises, and having filed herein its Memorandum Decision dated December 1, 1975, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that Judgment be entered in accordance therewith,

NOW, THEREFORE, by reason of the law and findings aforesaid,

IT IS ORDERED, ADJUDGED AND DECREED, that Judgment be entered in favor of the above named plaintiffs, as follows:

1. That specific performance of the settlement agreements Dated May 2, 1973, and entitled "Covenant Not to Sue" and "Covenant Not to Proceed Further and Not to Execute", copies of which are attached to the pleadings herein, be, and the same hereby is, granted.

2. That Louise Spencer, and the Executor of the Estate of S. R. Spencer, deceased, and all of the parties claiming an interest in said estate being parties to the within action and before the Court in this proceeding, it is hereby ordered, adjudged and decreed that the sum of $150,000.00 agreed to be paid by the plaintiff, Idaho Livestock Commission Company, under the terms of the "Covenant Not to Sue", dated May 2, 1973, for the said 127½ shares of its common stock fairly represents the fair market value of said shares of stock; that the sale and transfer of said shares of stock are in the best in-

terests of the Estate of S. R. Spencer, deceased, and each person or claimant having an interest in said estate. A copy of the settlement agreement entitled "Covenant Not to Sue", dated May 2, 1973, together with a copy of this Judgment, shall be filed with the Magistrate's Division of this Court in the Estate of S. R. Spencer, deceased, Case No. 4193. Insofar as said 127½ shares of stock of Idaho Livestock Commission Company constitutes an asset of the Estate of S. R. Spencer, deceased, its sale and transfer to the plaintiff, Idaho Livestock Commission Company, is hereby approved, confirmed and ratified, and The Idaho First National Bank, Executor of said estate, is ordered and directed to transfer and deliver its interest in said shares of stock to said Idaho Livestock Commission Company as herein provided.

3. That the plaintiff, Idaho Livestock Commission Company, an Idaho corporation, upon payment of said purchase price, as herein ordered and directed is hereby awarded the ownership and title of the 127½ shares of its common stock presently held by the defendant, Louise Spencer and The Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased, free and clear of all claims of any of the parties to this action. Each and every one of the defendants in this action, and all persons claiming under or through them or any of them are forever barred and foreclosed of all right, title, claim, lien or interest in and to said shares of stock, or any portion thereof.

4. The defendant, The Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased, is hereby ordered and directed to deliver to the Clerk of this Court the certificate or certificates representing the

said 127½ shares of common stock of the plaintiff, Idaho Livestock Commission Company, properly endorsed for transfer. The defendant, Louise Spencer, is hereby ordered and directed to execute and deliver to the Clerk of this Court a stock power in the form attached to this Judgment, transferring her interest, if any, in the said 127½ shares of common stock of the plaintiff, Idaho Livestock Commission Company. In the event the defendant, Louise Spencer, shall fail to execute and deliver said stock power to the Clerk of this Court within twenty-one (21) days after this Judgment becomes final, then and in such event the Clerk of this Court is directed to execute said stock power on her behalf, pursuant to the provisions of this Judgment. The Clerk of this Court shall thereupon deliver said endorsed certificate or certificates representing said 127½ shares of common stock and said executed stock power to the plaintiff, Idaho Livestock Commission Company, upon the payment by said plaintiff to the Clerk of this Court of the sum of $125,000.00 as provided in paragraph 6. of this Judgment. In the event of the failure of either of said defendants to comply with the provisions of this paragraph, the Court may issue such further protective orders as it shall deem necessary to carry out the terms of this Judgment.

5. With respect to lawsuit No. 13,674, Louise Spencer, et al., plaintiffs v. Floyd E. Skelton, et al., defendants, Seventh Judicial District Court of the State of Idaho, in and for the County of Bonneville, IT IS ORDERED, as follows:

A. The defendant, Louise Spencer, and the defendants, Leland Spencer, Carmen Spencer Jensen, Alexa Spencer Elkington, Janet Spencer, and Miriam

Spencer (hereinafter referred to as the "Spencer Children") and any person acting for them or on their behalf or on behalf of the Estate of S. R. Spencer, deceased, are hereby enjoined and prohibited from proceeding further in said pending lawsuit against the plaintiff, Floyd E. Skelton, or any of the following named parties: Floyd E. Skelton and M. R. Skelton, President and Director of Idaho Livestock Auction Company; Floyd E. Skelton and M. R. Skelton, partners of Skelton-Spencer Trading Company; M. R. Skelton, individually; Idaho Auction Company, a corporation; Idaho Livestock Auction, Inc.; Floyd E. Skelton and Leon Skelton, doing business as Idaho Livestock Auction, a partnership; Floyd E. Skelton, doing business as Skelton's Trading Company; and Leon Skelton, individually. Said defendants are further enjoined and prohibited from levying or suing out an execution, attachment or other legal remedy against the plaintiff, Floyd E. Skelton, and the other above named parties, or in any manner affecting collection on any judgment entered in said lawsuit. This Judgment shall not in any way limit or restrict the right of the plaintiffs in said lawsuit No. 13,674 to continue proceedings therein with respect to the defendant, The Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased.

B. That the "Covenant Not to Proceed Further and Not to Execute", dated May 2, 1973, is a reasonable compromise of disputed claims and is in the best interests of all of the parties to said lawsuit No. 13,674 and all parties appearing in this lawsuit and

said settlement is binding upon all of the defendants herein and their born or unborn children. A copy of said settlement agreement, together with a copy of this Judgment, shall be filed with the Magistrate's Division of this Court in the Estate of S. R. Spencer, deceased, Case No. 4193, there to await the further disposition of the assets of said estate in accordance with the orders of this Court. Insofar as said settlement agreement or the claims settled therein, or the payments made thereunder shall constitute an asset of the Estate of S. R. Spencer, deceased, said settlement is hereby approved, confirmed and ratified with respect to the Estate of S. R. Spencer, deceased, and shall be binding upon said estate and all persons claiming an interest therein. This Judgment shall be dispositive of all issues decided therein with respect to the Estate of S. R. Spencer, deceased, or any persons claiming an interest therein.

C. The defendant, Louise Spencer, is obligated to indemnify and hold harmless the plaintiff, Floyd E. Skelton, from any expense, loss, or damage incurred as a result of any claims or demands made by her, the Executor of the Estate of S. R. Spencer, the "Spencer Children", or by their children, born or unborn, their personal representatives, heirs and assigns, or any one acting for, by or through them, concerning the matters set forth in the agreement, including, but not limited to, the said pending lawsuit known as Case No. 13,674.

6. The plaintiff, Idaho Livestock Commission Company, is ordered to pay to the Clerk of this Court the sum

of $125,000.00, representing the balance of the payments due under the agreement entitled "Covenant Not to Sue", dated May 2, 1973, and representing the purchase price remaining payable for the 127½ shares of said plaintiff's stock ordered delivered hereunder. The plaintiff, Floyd E. Skelton, is ordered to pay to the Clerk of this Court the sum of $32,500.00, representing the balance of the payments due under the agreement entitled "Covenant Not to Proceed Further and Not to Execute", dated May 2, 1973. Said sums shall be held by the Clerk of this Court pursuant to the Order of this Court and said sums shall be divided among the various defendants in this proceeding according to their respective claims and interests as shall be determined by the Order of this Court following a subsequent hearing on the merits of each of said claims.

7. The Clerk of this Court is hereby ordered and directed to pay to the plaintiffs from the sums so deposited with the Clerk of this Court as required in paragraph 6. above, the sum of $16,000.00, representing reasonable attorneys' fees incurred by plaintiffs in this proceeding, together with such additional sum as shall be allowed by the Court as proper costs. All such attorneys' fees and costs shall be allocated and charged against the respective interests of the defendants in said fund in such manner as shall be determined by the Order of this Court following a subsequent hearing on the manner of allocation of such fees and costs.

RENDERED AND ENTERED this 21 day of January, 1976.

/s/ Willard C. Burton
District Judge

CERTIFICATE OF MAILING BY CLERK OF COURT

I certify that I am the duly elected and qualified Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville; that I mailed a copy of the foregoing Judgment to the following attorneys this 22 day of January, 1976:

Lloyd J. Webb, Esq.
Webb, Pike, Burton & Carlson
P. O. Box 33
Twin Falls, Idaho 83301

C. Timothy Hopkins, Esq.
Hopkins and French
P. O. Box 1196
Idaho Falls, Idaho 83401

Arthur L. Smith, Esq.
Albaugh, Smith & Pike
P. O. Box 428
Idaho Falls, Idaho 83401

Terry L. Crapo, Esq.
Holden, Holden, Kidwell, Hahn & Crapo
P. O. Box 129
Idaho Falls, Idaho 83401

/s/ DelRoy C. Bodily
Clerk of District Court

/s/ Irene Harries

(Seal)

Stock Assignment Separate from Certificate

For Value Received, the undersigned hereby sell, assign and transfer unto:

(Please insert Social Security or other identification number of assignee) Idaho Livestock Commission Company,

One Hundred Twenty-seven and one-half (127½) Shares of the ..... Stock of the Idaho Livestock Commission Company Corporation standing in S. R. Spencer name(s) on the books of said Corporation represented by certificate(s) No. 11 for 85 shares, and No. 14 for 42½ shares, herewith and do hereby irrevocably constitute and appoint .....attorney to transfer the said stock on the books of the within named Corporation with full power of substitution.

Dated..... X.....

X.....

.....

.....
Authorized Signature

.....
Title

To Be Completed When Forwarded for Transfer

It is hereby certified that the actual value of the shares of stock hereby transferred is $.....

X.....

The signature(s) on this assignment must correspond with the name(s) on the face of the certificate in every particular, without alteration or enlargement, or any change.

The signature(s) of the assignor(s) must be guaranteed hereon.

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NOTICE OF FILING

I hereby certify that, pursuant to Rule 77 (d), I. R. C. P., Notice is hereby given to the following that the above document was filed of record in the District Court, Bonneville County, this 22 day of January, 1976, to:

Attorney: Counsel of Record

Address: .....

Attorney/Defendant: Counsel of Record

Address: .....

Clerk of the District Court
/s/ Irene Harries, Deputy

Received Jan. 23, 1976

Webb, Burton, Carlson & Pedersen

Terry L. Crapo, of
Holden, Holden, Kidwell, Hahn & Crapo

P. O. Box 129
Idaho Falls, Idaho 83401
Telephone: A/C 208 - 523-0620

Attorneys for Plaintiffs

In the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville

Civil No. 20,500

FLOYD E. SKELTON, and IDAHO LIVESTOCK COMMISSION COMPANY, an Idaho corporation,

Plaintiffs,

vs.

LOUISE SPENCER, LELAND SPENCER, CARMEN SPENCER JENSEN, ALEXA SPENCER ELKINGTON, JANET SPENCER, MIRIAM SPENCER, and THE IDAHO FIRST NATIONAL BANK, Executor of the Estate of S. R. Spencer, deceased,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having heretofore and on the 1st day of December, 1975, entered its Memorandum Decision in favor of the plaintiffs in the above captioned matter, and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law in support of the Judgment to be entered herein:

FINDINGS OF FACT

1. On or about the 16th day of September, 1958, one Stanley R. Spencer died and left as heirs the following: Louise Spencer, his wife; Leland Spencer, Carmen Spencer, Alexa Spencer Elkington, Janet Spencer, and Miriam Spencer, sons and daughters of Stanley R. Spencer and his surviving widow, Louise Spencer. Mr. Spencer died testate and his Will was presented to the Probate Court in Bonneville County, Idaho, for probate. The Idaho First National Bank was appointed the Executor of said estate and still continues to serve in that capacity. The Estate of Stanley R. Spencer is presently being administered in the Magistrate's Division of the District Court of the Seventh Judicial District of the State of Idaho, in and for Bonneville County, Case No. 4193.

2. At the time of his death, Stanley R. Spencer was a partner in the Idaho Livestock Auction Company. Prompted by the terms of a contract entered into between Mr. Spencer and his surviving partners, Floyd E. Skelton and M. R. Skelton, Stanley R. Spencer's interest in the Livestock Auction Company partnership was offered for sale by the Executor of the estate and was purchased individually by the surviving members of the partnership for the sum of $167,517.55. The sale was made to the said individuals, the surviving partners, by The Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased, on March 31, 1961, and on that date an Order confirming such sale was entered in the Probate Court of Bonneville County, State of Idaho.

3. The defendant, Louise Spencer, felt that the amount offered for the sale of the Spencer partnership interest was so inadequate as to work a fraud upon her and her children. On March 16, 1964, Louise Spencer, along with three of her children, namely, Alexa Spencer, Janet Spencer and Miriam Spencer, by her guardian ad litem A. W. Naegle (Miriam Spencer then not having attained her majority), brought suit in the District Court of the State of Idaho, in and for Bonneville County, Case No. 13,674, against Floyd E. Skelton, and The Idaho First National Bank, as Executor of the Estate of S. R. Spencer, deceased, and others, alleging, among other things, that the said sale of the partnership interest was illegal and void, and seeking damages, interest, and attorneys' fees, or in the alternative that the sale be vacated, set aside and declared void. The suit also sought an accounting of the partnership interest.

4. The other two children of S. R. Spencer and Louise Spencer, namely, Leland Spencer and Carmen Spencer, having been named as defendants in said suit, thereafter joined in said suit as plaintiffs.

5. After several preliminary skirmishes and hearings, and after one appeal to the Idaho Supreme Court, the case was finally set for trial in the District Court of the Seventh Judicial District for the County of Bonneville, State of Idaho, on the 1st day of May, 1973. The trial was set in the District Court, before a jury, Judge Willard C. Burton presiding. On the morning of May 1, 1973, at the time set for the commencement of trial the Judge was present in the Courtroom, together with a jury panel. Also present at that time were the attorneys for the plaintiffs, Ray W. Rigby and Gordon S. Thatcher, and attorneys for the defendants, being William S. Holden and other members of the firm of Holden, Holden, Kidwell, Hahn & Crapo, representing Floyd Skelton and the Skelton interests, and A. L. Smith, representing The Idaho First National Bank as Executor of the Estate of S. R. Spencer, deceased.

6. A jury was selected on May 1, 1973, and sworn and the cause was recessed for that day. On May 2, 1973, before commencement of opening statements to the jury, the Court was approached by the attorneys and informed that they might be able to settle the matter without a trial. They requested that the commencement of trial be postponed while they entered into negotiations with regard to settlement.

7. The members of the jury, together with the Judge, waited in the Courtroom until 3:00 or 4:00 o'clock

in the afternoon on May 2, 1973, before they were finally told that it appeared that a settlement would be reached and the jury was therefore excused.

8. During the next several days, the terms of the settlement were reduced to writing and were signed by the parties to this action. There were two basic settlement documents. One agreement was entitled "Covenant Not to Proceed Further and Not to Execute", dated May 2, 1973, a copy of which is attached to the pleadings in this matter. The other document was entitled "Covenant Not to Sue", dated May 2, 1973, a copy of which is attached to the pleadings in this matter.

9. By the terms of the "Covenant Not to Proceed Further and Not to Execute", the plaintiff, Floyd E. Skelton, agreed to pay the defendant, Louise Spencer, the sum of $5,000.00 upon the execution of the agreement and an additional $32,500.00 at such time as she completed performance of the terms and conditions of the said agreement on her part to be performed. The Court finds that the plaintiff, Floyd E. Skelton, did in fact pay the sum of $5,000.00 to the defendant, Louise Spencer, upon the execution of the settlement document and that the plaintiff, Floyd E. Skelton, has tendered to the Court and the defendant, Louise Spencer, the sum of $32,500.00 to be paid upon performance and completion of the terms of the agreement to be performed by the said defendant.

10. The Court finds that by the terms and provisions of the settlement agreement entitled "Covenant Not to Proceed Further and Not to Execute", the defendant, Louise Spencer, agreed as follows:

A. That neither she nor the defendants, the Spencer Children, would proceed further in the said pending lawsuit Case No. 13,674 against the plaintiff, Floyd E. Skelton, nor any other party named in said lawsuit as a defendant, except the defendant, The Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased; nor would she or the Spencer Children levy execution or otherwise effect collection on any judgment entered in said lawsuit.

B. That neither she nor the defendants, the Spencer Children, nor anyone for them or on their behalf or on behalf of the Estate of S. R. Spencer, deceased, would seek to proceed further in the said pending lawsuit Case No. 13,674, nor levy or sue out an execution, attachment, or other legal remedy against the plaintiff, Floyd E. Skelton, and the other specified parties identified in said agreement.

C. That she would forthwith cause an executed copy of the Covenant Not to Proceed Further and Not to Execute agreement to be filed with the Magistrate's Court of the County of Bonneville, State of Idaho, in the Estate of S. R. Spencer, deceased, and would diligently pursue and secure Court approval of the compromise agreement on behalf of the Spencer Children, and their minor and unborn children.

D. That she would deliver to the plaintiff, Floyd E. Skelton, a certified copy of a Court Order authorizing the compromise of said claims, a counterpart of the agreement signed and properly notarized by the Spencer Children, and an opinion letter from her attorneys as required by the agreement.

E. That she would indemnify and hold harmless the plaintiff, Floyd E. Skelton, and certain other named parties from any expense, loss, or damage incurred as a result of any claims or demands made by her, the Executor of the Estate of S. R. Spencer, the Spencer Children, or by their children, born or unborn, their personal representatives, heirs, and assigns, or any one acting for, by, or through them, concerning the matters set forth in the agreement, including, but not limited to, the pending lawsuit Case No. 13,674.

11. Inventoried in the Estate of S. R. Spencer, as the community property of S. R. Spencer and Louise Spencer, are one hundred twenty-seven and one-half (127½) shares of the capital stock of the plaintiff, Idaho Livestock Commission Company, an Idaho corporation (hereafter referred to as "Plaintiff Corporation"). The defendant, Louise Spencer, claims this stock is her sole and separate property and free of the interest of the Estate of S. R. Spencer or the Spencer children. However, both the estate and the children claim an interest in said shares of stock.

12. On numerous occasions the defendant, Louise Spencer, has demanded that the defendant, Idaho First National Bank, as Executor of the Estate of S. R. Spencer, deceased, bring a shareholder suit against the Plaintiff Corporation, and its majority shareholders, officers, and directors, but the defendant Executor bank has refused to file such a suit.

13. Recognizing that a shareholder action or the pursuit of such claim would be expensive, time consum-

ing, and would dissipate the assets of the Estate of S. R. Spencer and the Plaintiff Corporation, the Plaintiff Corporation entered into an agreement with the defendant, Louise Spencer, and approved by her counsel of record, entitled "Covenant Not to Sue", dated May 2, 1973.

14. By the terms of the "Covenant Not to Sue", the Plaintiff Corporation agreed to purchase said 127½ shares of its capital stock and to pay the sum of $150,000.00 therefor, said stock to be free and clear of all liens and encumbrances. The Court finds that the Plaintiff Corporation did pay the sum of $25,000.00 to the defendant, Louise Spencer, upon the execution of said settlement document and that the Plaintiff Corporation has tendered to the Court and the defendant, Louise Spencer, the sum of $125,000.00, to be paid upon performance and completion of the terms of the agreement required to be performed by the said defendant.

15. The Court finds that by the terms and provisions of the settlement agreement entitled "Covenant Not to Sue", dated May 2, 1973, the defendant, Louise Spencer, agreed as follows:

A. That she should promptly pursue to completion all actions necessary to vest in her a clear title to said 127½ shares of stock and the right to receive the payments due under the "Covenant Not to Sue" agreement to the exclusion of claims of all other interested parties, and would deliver said 127½ shares of stock to the Plaintiff Corporation, free and clear of all liens, claims, and encumbrances.

B. That she would promptly secure an approval of the "Covenant Not to Sue" from an Idaho court of competent jurisdiction on behalf of the Spencer Children and their minor children and unborn children.

C. That she would promptly deliver a certified copy of such order of said court of competent jurisdiction, together with her attorneys' opinion as required by the agreement, to the Plaintiff Corporation.

D. That she would not sue or bring action against the Plaintiff Corporation or certain other named parties for any cause, except for the enforcement of the "Covenant Not to Sue" agreement and the agreement identified in Count III of the Complaint in this action.

E. That she would indemnify and hold harmless the Plaintiff Corporation and certain other named parties from any expense, loss or damage incurred as a result of claims or demands hereafter made by her, or made by the defendant The Idaho First National Bank, as Executor of the Estate of S. R. Spencer, or the Spencer Children, or their born or unborn children, or heirs and assigns, or any one acting for, by or through them, concerning said 127½ shares of stock of Plaintiff Corporation or any related actions.

F. That she would pursue with diligence to final completion all covenants on her part contained in said "Covenant Not to Sue" agreement and that the Plaintiff Corporation is entitled to specific performance of the terms of said agreement.

16. Following the execution of both of said settlement agreements by the parties and the payment by the plaintiffs to the defendant, Louise Spencer, of the sums above described, the plaintiffs thereafter made both written and oral demands upon the defendant, Louise Spencer, through her attorneys of record, for the performance of the remainder of the provisions of the settlement agreements. The requests for performance of the settlement agreements were rebuffed by Louise Spencer and she has refused to perform according to the terms of the said agreements.

17. Following the refusal of Louise Spencer to perform according to the terms of the said settlement agreements, this lawsuit was commenced by the plaintiffs, requesting that the Court find the said settlement agreements to be binding upon Louise Spencer, determining title to the said shares of stock of the Plaintiff Corporation, and ordering the defendants to carry out the terms of the said settlement agreements.

18. Louise Spencer has answered the Complaint of the plaintiffs in this action, contending that the settlement reached was unfair, inadequate and improper and that she should not be bound by the terms of the said settlement agreements. She urges the Court to find the terms of the said settlement agreements to be grossly inadequate, to release her from the terms of the said settlement agreements, and to reopen the said original lawsuit and set it for trial.

19. Trial of this action was had before District Judge Willard C. Burton, sitting without a jury, in Idaho Falls, Idaho, on September 8, 1975. Louise Spencer was not

present in the Courtroom. However, an Affidavit prepared by her was read into the record as her testimony. All parties stipulated that the Affidavit could be accepted as her evidence in the case and all parties waived the right to cross-examination as to the testimony presented in the Affidavit. At the close of the trial the parties were each requested to submit briefs and each party has done so.

20. The Court finds that on May 2, 1973, the attorneys for the plaintiffs and the attorneys for Louise Spencer did get together in an attempt to negotiate a settlement of said lawsuit, Case No. 13,674. Although Louise Spencer has denied that she was kept informed of the settlement negotiations, the evidence against her is overwhelming on this point and the Court finds that Louise Spencer was consulted frequently throughout each day with regard to each step in the negotiations and that her approval was sought and obtained on each point before any decision was made.

21. Although Louise Spencer in her said Affidavit now contends that the terms of said settlement agreements reached in the settlement were grossly inadequate, the Court finds that her attorneys advised her prior to May 2, 1973, that a total settlement of $150,000.00 for all claims would be quite fair and she authorized a settlement in this range. The settlement actually negotiated and concluded amounted to the sum of $187,000.00, which the Court finds to be larger than the amount that Louise Spencer had advised her attorneys would be acceptable to her.

22. The Court further finds that based upon all of the evidence presented to the Court, the amount of the

settlement was fair and adequate under all of the circumstances and was actually higher than might have been recovered had trial proceeded. The amount of the settlement to be paid for the 127½ shares of the stock of the plaintiff, Idaho Livestock Commission Company, fairly represented its fair market value.

23. In her said Affidavit, Louise Spencer had charged that she was displeased with the settlement, that she was induced to make the settlement by her attorneys, who so abused her and wore her out that she finally signed the settlement documents simply to get it over with. The Court specifically finds against the defendant, Louise Spencer, on this factual matter, and finds that Louise Spencer voluntarily signed the settlement agreement, free of threats, abuse or coercion, and that at the time of signing said settlement agreements she was pleased with the settlement.

24. In a letter written by Louise Spencer to her then attorneys on the 9th day of May, 1973, more than a week after the trial and settlement, she said: "I hired you and Ray to resolve the matter with Floyd and the bank. On this you are doing and have done a most excellent job." Then, on the 14th day of May, 1973, she wrote another letter to her attorneys in which she stated: "I am pleased with your painstaking work resolving the matter with Floyd, and with your integrity." Again, on the 18th day of May, 1973, she wrote another letter to her attorneys in which she said: "In the final analysis we won the case because of what you take for granted, your integrity."

25. In view of these statements by Louise Spencer at her home in Denver, Colorado, at a time sufficiently

removed from the trial for her to have recovered from the effects thereof and while away from the attorneys whom she said had influenced her in the decision to settle, the Court is unable to find that at the time the said settlement agreements were executed Louise Spencer was displeased with their terms, or that she had objected to their terms, or that she signed the said settlement agreements only because her attorney insisted upon it. To the contrary, the Court finds that Louise Spencer approved the settlement and signed the said settlement agreements of her own free will and choice after having been fully informed of the terms and conditions thereof.

26. The Court finds that at some time after May 18, 1973, Louise Spencer did change her mind and did become convinced that the settlement as set out in said settlement agreements was unfair. On July 27, 1973, Louise Spencer discharged her attorneys and she thereafter refused to recognize the terms of the said settlement agreements. She has since that date claimed that the amount of the settlement was grossly inadequate and unfair. She has offered no evidence, however, beyond her mere assertion of that fact, to show that the terms of said settlement agreements were grossly inadequate and unfair.

27. The evidence presented to the Court is conclusive that the settlement reached as set out in said settlement agreements was a result of compromise by both sides and was a voluntary agreement by the parties on both sides. The Court specifically finds that the settlement reached as set out in said settlement agreements was fair and just and was equitable to both parties. The Court further finds that the said settlement agreements should be enforced according to their terms and provisions.

28. The 127½ shares of stock of the Plaintiff Corporation are a unique asset and of particular value to the Plaintiff Corporation, and the Plaintiff Corporation therefore has no adequate remedy at law for the breach of contract by the defendant, Louise Spencer.

29. The defendant, Miriam Spencer, has been served with a Summons, together with a copy of the Complaint, in the manner required by law and has failed to appear or otherwise defend in this matter. Her default has been entered according to law and judgment shall be entered against her accordingly.

30. The defendants, Leland Spencer, Carmen Spencer Jensen, Alexa Spencer Elkington, and Janet Spencer, hereafter referred to as the Spencer Children, and the defendant, The Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased, have all appeared in this proceeding and participated in the trial thereof. Each of said defendants had agreed and stipulated that the plaintiffs may recover judgment in this matter against the defendant, Louise Spencer, as prayed for in the Complaint on file herein and against them with respect to the determination of title to the said 127½ shares of stock of the Plaintiff Corporation and with respect to the settlement of said lawsuit No. 13,674. Said defendants have stipulated and agreed that the Court may award a good and clear title to the said 127½ shares of stock to the Plaintiff Corporation upon the payment into Court of the balance of the purchase price stipulated in the said settlement agreements.

31. Each of the defendants described in paragraph 30. above claims an interest in the money remaining payable under the said settlement agreements. However, they recognize that the interests they claim did not pertain to the plaintiffs and the prayer of the Complaint herein. Accordingly, said defendants described in paragraph 30. above have stipulated and agreed that the Court may enter judgment in favor of the plaintiffs, and order the payment to the Clerk of the District Court of the sums remaining payable by the plaintiffs under the terms of the said settlement agreements, there to await the further decision of this Court with respect to allocation or distribution of said sums among the defendants according to their respective interests after a full hearing on the merits.

32. By reason of the failure of the defendant, Louise Spencer, to perform according to the terms and provisions of the said settlement agreements, the plaintiffs have been required to retain the services of a firm of attorneys for the purpose of enforcing the terms of said settlement agreements and of bringing this action. Each of the settlement agreements specifically provides that the defendant, Louise Spencer, will indemnify and hold the plaintiffs harmless of and from all such costs and expenses. The defendant, Louise Spencer, is therefore obligated to pay to the plaintiffs the reasonable costs and expenses, including a reasonable attorneys' fee, expended by plaintiffs in enforcing the terms of said settlement agreements.

33. The plaintiffs and the defendant, Louise Spencer, have stipulated and agreed that in the event the Court finds that the defendant, Louise Spencer, is obligated to pay the plaintiffs a reasonable attorneys' fee and costs, then and in such event the Court may determine a reasonable attorneys' fee in its own discretion, without need for

an evidentiary hearing. The Court being fully advised in the premises finds that a reasonable attorneys' fee for the services rendered in connection with this matter by plaintiffs' counsel is the sum of $16,000.00.

CONCLUSIONS OF LAW

1. Each of the Findings of Fact separately stated above is also specifically adopted and approved as a Conclusion of law.

2. The defendant, Louise Spencer, approved and entered into the settlement agreements dated May 2, 1973, and entitled "Covenant Not to Sue" and "Covenant Not to Proceed Further and Not to Execute" as her voluntary acts and of her own free will and choice, without coercion, abuse or force of any type or nature. The defendant, Louise Spencer, was ably assisted by competent counsel and was fully informed of the terms and conditions of the settlement agreements before she signed them as her voluntary act.

3. The amount of the settlement to be paid by the plaintiffs is fair and adequate and represents a just compromise of the disputes between the parties. The amount of the settlement to be paid for the 127½ shares of stock of Idaho Livestock Commission Company fairly represents its fair market value and is an adequate consideration.

4. The Court having found that the settlement reached was fair and just and that the settlement agreements described in paragraph 2. above were freely entered into, without coercion or force of any type, and that the terms of said settlement agreements are fair and equitable,

the Court concludes that said settlement agreements should be enforced according to their terms and provisions and that the plaintiffs are entitled to a judgment in their favor enforcing the terms of said agreements.

5. The plaintiff, Idaho Livestock Commission Company, upon payment of the money as required in paragraph 8. hereof, is entitled to an award of the ownership and title of the 127½ shares of its common stock presently held by the Estate of S. R. Spencer and the defendant, Louise Spencer, free and clear of all claims of any of the parties to this action, and each of the defendants and all persons claiming under or through them is barred and foreclosed of any and all right, title, interest claim, or lien of any type or nature whatsoever in said shares of stock. The said plaintiff is entitled to a judgment requiring the defendants, Louise Spencer, and The Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased, to deliver the certificates representing said shares of stock, properly endorsed, or with properly executed stock powers, to the Clerk of the District Court for delivery to the Plaintiff Corporation upon payment of the monies required to be paid under paragraph 8. hereof. Upon the failure of said defendants to endorse and deliver said shares of stock or stock powers within such time as the Court may provide, the Clerk of the District Court may be authorized to endorse and deliver said shares of stock and stock powers, and the Court may enter such other protective orders with respect to said shares of stock as the Court may deem proper.

6. The Executor of the Estate of S. R. Spencer, deceased, and all of the parties claiming an interest in said estate being before the Court in this proceeding, and the

Court having specifically found that the amount agreed to be paid by the plaintiff, Idaho Livestock Commission Company, for the said 127½ shares of its common stock fairly represents the fair market value of said shares of stock, the Court now concludes as a matter of law that the sale and transfer of said shares of stock is in the best interests of the Estate of S. R. Spencer, deceased, and each person or claimant having an interest in said estate. Accordingly, insofar as the said 127½ shares of stock of Idaho Livestock Commission Company constitutes an asset of the Estate of S. R. Spencer, deceased, the plaintiffs are entitled to a judgment, that the sale and transfer to the plaintiff, Idaho Livestock Commission Company, should be approved, confirmed and ratified and that The Idaho First National Bank, Executor of said estate, may be ordered and directed to transfer and deliver its interest in said shares of stock as herein provided. The judgment shall further provide that a copy of the settlement agreement entitled "Covenant Not to Sue", dated May 2, 1973, together with a copy of the Judgment, shall be filed with the Magistrate's Division of this Court in the Estate of S. R. Spencer, deceased, Case No. 4193.

7. The plaintiff, Floyd E. Skelton, is entitled to an Order and Judgment of this Court specifically enforcing the terms and provisions of the "Covenant Not to Proceed Further and Not to Execute", dated May 2, 1973, including specific provisions that:

A. Neither the defendant, Louise Spencer, nor any of the Spencer Children, or any person acting for them or on their behalf or on behalf of the Estate of S. R. Spencer, deceased, shall proceed further in the pending lawsuit Case No. 13,674 against the plaintiff, Floyd E. Skelton, nor any other party named in said settlement agreement, nor shall said defendants or any person acting for them or on their behalf or on behalf of the Estate of S. R. Spencer, deceased, levy or sue out an execution, attachment, or other legal remedy against the plaintiff, Floyd E. Skelton, or any other party named in said settlement agreement, or in any manner effect collection against them on any judgment entered in said lawsuit. Such judgment shall not in any way limit or restrict the right of the plaintiffs in said lawsuit Case No. 13,674 to continue proceedings therein with respect to the defendant, The Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased.

B. The "Covenant Not to Proceed Further and Not to Execute", dated May 2, 1973, is a reasonable compromise of disputed claims and is in the best interests of all the parties to said lawsuit Case No. 13,674, and all parties appearing in this lawsuit and said settlement is binding upon all of the defendants herein and their born or unborn children. A copy of said settlement agreement, together with a copy of the Judgment shall be filed with the Magistrate's Division of this Court in the Estate of S. R. Spencer, deceased, Case No. 4193, there to await the further disposition of the assets of said estate in accordance with the orders of this Court. Insofar as said settlement agreement, or the claims settled therein, or the payments made thereunder shall constitute an asset of the Estate of S. R. Spencer, deceased, the plaintiff is entitled to an order and judgment ap-

proving, confirming and ratifying said settlement with respect to the Estate of S. R. Spencer, deceased, and holding that said judgment is now binding upon said estate and all persons claiming an interest therein. Such judgment shall be dispositive of all issues decided herein with respect to the Estate of S. R. Spencer, deceased, or any persons claiming an interest therein.

C. The defendant, Louise Spencer, is obligated to indemnify and hold harmless the plaintiff, Floyd E. Skelton, from any expense, loss, or damage incurred as a result of any claims or demands made by her, the Executor of the Estate of S. R. Spencer, the "Spencer Children", or by their children, born or unborn, their personal representatives, heirs, and assigns, or any one acting for, by or through them, concerning the matters set forth in said settlement agreement, including, but not limited to, the pending lawsuit known as Case No. 13,674.

8. That the plaintiff, Idaho Livestock Commission Company, shall be required to pay to the Clerk of this Court the sum of $125,000.00, representing the balance of the payments due under the agreement entitled "Covenant Not to Sue", dated May 2, 1973, and representing the balance of the purchase price remaining payable for the 127½ shares of said plaintiff's stock which is to be ordered to be endorsed and delivered to said plaintiff. The plaintiff, Floyd E. Skelton, shall be required to pay to the Clerk of this Court the sum of $32,500.00, representing the balance of the payments due under the agreement en-

titled "Covenant Not to Proceed Further and Not to Execute", dated May 2, 1973. Said sums shall be held by the Clerk of this Court pursuant to the Order of this Court and said sums shall be divided among the various defendants in this proceeding according to their respective claims and interests as shall be determined by the Order of this Court following a subsequent hearing on the merits of each of said claims.

9. That the Clerk of this Court shall be ordered and directed to pay to the plaintiffs from the sums so deposited with the Clerk of this Court as required in paragraph 8. above, the sum of $16,000.00, representing reasonable attorneys' fees incurred in this proceeding, together with such additional sum as shall be allowed by the Court as proper costs. All such attorneys' fees and costs shall be allocated and charged against the respective interests of the defendants in said fund in such manner as shall be determined by the Order of this Court following a subsequent hearing on the manner of allocation of such fees and expenses.

10. That Judgment should be entered in accordance with the foregoing Findings of Fact and Conclusions of Law.

ENTERED at Rexburg, Idaho, this 21 day of January, 1976.

/s/ Willard C. Burton
District Judge

CERTIFICATE OF MAILING BY CLERK OF COURT

I certify that I am the duly elected and qualified Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville; that I mailed a copy of the foregoing Findings of Fact and Conclusions of Law to the following attorneys this 22 day of January, 1976:

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/s/ DelRoy C. Bodily
Clerk of District Court

/s/ Irene Harries

(SEAL)

Case No. ....., Filed 9 a.m. March 8, 1976

DelRoy C. Bodily, Clerk

By I. H., Deputy Clerk

Terry L. Crapo, of
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Attorneys for Plaintiffs

In the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville

Civil No. 20,500

FLOYD E. SKELTON, and IDAHO LIVESTOCK COMMISSION COMPANY, an Idaho corporation,

Plaintiffs,

vs.

LOUISE SPENCER, LELAND SPENCER, CARMEN SPENCER JENSEN, ALEXA SPENCER ELKINGTON, JANET SPENCER, MIRIAM SPENCER, and THE IDAHO FIRST NATIONAL BANK, Executor of the Estate of S. R. Spencer, deceased,

Defendants.

ORDER AMENDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Motion to Amend Findings of Fact and Conclusions of Law and related Motions of the defendants, Louise Spencer and Miriam Spencer, and the Motion to Amend Findings of Fact and Conclusions of Law of the

defendant, Idaho First National Bank, Executor of the Estate of S. R. Spencer, have duly come before the Court for hearing, in Chambers, pursuant to notice, on Monday, March 1, 1976, with the plaintiffs appearing through their attorney, Terry L. Crapo, and the defendants, Louise Spencer and Miriam Spencer, appearing through their attorney, Lloyd J. Webb, and the defendant, Idaho First National Bank, appearing through its attorney, A. L. Smith, and the Court having heard the argument of counsel and being fully advised in the premises,

IT IS ORDERED, that the FINDINGS OF FACT AND CONCLUSIONS OF LAW entered by the Court on January 21, 1976, in the above entitled action, be, and they hereby are, amended as follows:

A. Finding 2., page 2, is hereby amended to read as follows:

> "2. At the time of his death, Stanley R. Spencer was a partner in Skelton-Spencer Trading Company, formerly known as the Idaho Livestock Auction Company. Stanley R. Spencer's interest in the Skelton-Spencer Trading Company was offered for sale by the Executor of the estate and was purchased individually by the surviving members of the partnership for the sum of $168,517.77. The sale was made to the said individuals, the surviving partners, by the Idaho First National Bank, Executor of the Estate of S. R. Spencer, deceased, on March 31, 1961, and on that date an Order confirming such sale was entered in the Probate Court of Bonneville County, State of Idaho."

B. Finding 3., page 2, is hereby amended by striking the word "felt" in line 1 of said Finding and substituting the word "believed".

C. Finding 5., page 3, is hereby amended by striking the words "skirmishes and" in line 1 of said Finding.

D. Finding 7., page 4, is hereby amended to read as follows:

> "7. The members of the jury, together with the Judge, waited in the Courtroom until 3:00 or 4:00 o'clock in the afternoon on May 2, 1973, before they were advised that it appeared that a settlement would be reached and the jury was therefore excused."

E. The first sentence in Finding 8., page 4, is amended to read as follows:

> "During the next several days, the terms of the settlement were reduced to writing and were signed by the plaintiffs and the defendant Louise Spencer, and were later signed by the defendant, Miriam Spencer."

F. The last sentence in Finding 11., page 7, is hereby amended to read as follows:

> "However, both the estate and the children, other than Miriam Spencer, claim an interest in said shares of stock."

G. The last two lines of Finding 15.(a), page 8, are amended to read as follows: ". . . -tiff Corporation, free and clear of any liens, claims, and encumbrances."

H. Finding 16., page 10, is hereby amended by striking the word "rebuffed" in the last sentence and substituting therefor the word "refused".

I. Finding 18., page 10, is hereby amended to read as follows:

> "18. Louise Spencer has answered the Complaint of the plaintiffs in this action, contending that there

was never a meeting of the minds nor an agreement of the parties and that the settlement reached was unfair, inadequate and improper, and that she should not be bound by the terms of the said settlement agreements. She urges the Court to find the terms of the said settlement agreements to be grossly inadequate, to release her from the terms of the said settlement agreements, and to reopen the said original lawsuit and set it for trial."

J. Finding 22., page 12, is hereby amended to read as follows:

"22. The Court further finds that based upon all of the evidence presented to the Court, the amount of the settlement was fair and adequate under all of the circumstances and was actually higher than Mrs. Spencer's trial attorneys thought might have been recovered had trial proceeded. The amount of the settlement to be paid for the 127½ shares of the stock of the plaintiff, Idaho Livestock Commission Company, fairly represented its fair market value, including all undistributed earnings allocable to said stock, if any."

K. Finding 29., page 14, is hereby amended to read as follows:

"29. The defendant Miriam Spencer has been served with a Summons, together with a copy of the Complaint, in the manner required by law and has appeared in this matter through her attorney Lloyd J. Webb. The default previously entered against Miriam Spencer has been set aside by the Court and Mr. Webb has been allowed to appear on her behalf."

L. Finding 33., page 16, is hereby amended by the deletion of the sum of $16,000.00 in the last line, and the substitution therefore of the sum of $7,500.00.

M. Conclusion 3., page 17, is hereby amended to read as follows:

"3. The amount of the settlement to be paid by the plaintiffs is fair and adequate and represents a just compromise of the disputes between the parties. The amount of the settlement to be paid for the 127½ shares of stock of Idaho Livestock Commission Company fairly represents its fair market value, including all undistributed earnings allocable to said stock, if any, and is an adequate consideration therefore."

N. Conclusion 6., page 18, is hereby amended by inserting after the word "stock" in line 2, of page 19, the following words: "including all undistributed earnings allocable to said stock, if any."

IT IS FURTHER ORDERED, that except as above provided, and amended, the Motion to Amend Findings of Fact and Conclusions of Law is hereby denied.

IT IS FURTHER ORDERED, that the Motion to Make Additional Findings of Fact and Conclusions of Law and the Motion to Amend Judgment of the defendants, Louise Spencer and Miriam Spencer, is hereby denied.

EXCEPT AS HEREIN AMENDED AND MODIFIED, the Findings of Fact and Conclusions of Law rendered and entered January 21, 1976, are hereby confirmed and approved as amended.

RENDERED AND ENTERED this 3 day of March, 1976.

/s/ Willard C. Burton
District Judge

CERTIFICATE OF MAILING BY CLERK OF COURT

I certify that I am the duly elected and qualified Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville; that I mailed a copy of the foregoing ORDER AMENDING FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following attorneys this 9 day of March, 1976:

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/s/ DelRoy C. Bodily
Clerk of District Court

/s/ Irene Harries
(Seal)